

1 MCGREGOR W. SCOTT
United States Attorney
2 KATHLEEN A. SERVATIUS
KATHERINE E. SCHUH
3 Assistant United States Attorney
2500 Tulare Street, Suite 4401
4 Fresno, CA 93721
Telephone: (559) 497-4000
5 Facsimile: (559) 497-4099

6 Attorneys for Plaintiff
United States of America
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8
9 IN THE UNITED STATES DISTRICT COURT
10 EASTERN DISTRICT OF CALIFORNIA

11 UNITED STATES OF AMERICA,
12
13 Plaintiff,
v.

14 DIEGO LUA-GARCIA,
15 Defendants.
16

CASE NO. 1:20-CR-00031 NONE SKO

**STIPULATION TO CONTINUE STATUS
CONFERENCE DATE AND PROPOSED
ORDER THEREON**

Date: April 20, 2020
Time: 1:00 p.m.
Honorable Sheila K. Oberto

17
18 The United States of America, by and through MCGREGOR W. SCOTT, United States
19 Attorney, and KATHLEEN A. SERVATIUS and KATHERINE E. SCHUH, Assistant United States
20 Attorneys, and the defendant, by and through his attorney of record, hereby stipulate to continue the
21 status conference in this case from April 20, 2020 until August 17, 2020 at 1:00 p.m and for such time
22 between those dates be excluded from the calculation as to the time within which the defendant should
23 be tried.

24 On March 17, 2020, this Court issued General Order 611, which suspends all jury trials in the
25 Eastern District of California scheduled to commence before May 1, 2020. This General Order was
26 entered to address public health concerns related to COVID-19.

27 Although the General Order addresses the district-wide health concern, the Supreme Court has
28 emphasized that the Speedy Trial Act's end-of-justice provision "counteract[s] substantive

openendedness with procedural strictness,” “demand[ing] on-the-record findings” in a particular case. *Zedner v. United States*, 547 U.S. 489, 509 (2006). “[W]ithout on-the-record findings, there can be no exclusion under” § 3161(h)(7)(A). *Id.* at 507. And moreover, any such failure cannot be harmless. *Id.* at 509; *see also United States v. Ramirez-Cortez*, 213 F.3d 1149, 1153 (9th Cir. 2000) (explaining that a judge ordering and ends-of-justice continuance must set forth explicit findings on the record “either orally or in writing”).

Based on the plain text of the Speedy Trial Act—which *Zedner* emphasizes as both mandatory and inexcusable—the General Order requires specific supplementation. Ends-of-justice continuances are excludable only if “the judge granted such continuance on the basis of his findings that the ends of justice served by taking such action outweigh the best interest of the public and the defendant in a speedy trial.” 18 U.S.C. § 3161(h)(7)(A). Moreover, no such period is excludable unless “the court sets forth, in the record of the case, either orally or in writing, its reason or finding that the ends of justice served by the granting of such continuance outweigh the best interests of the public and the defendant in a speedy trial.” *Id.*

The General Order excludes delay in the “ends of justice.” 18 U.S.C. § 3161(h)(7) (Local Code T4). Although the Speedy Trial Act does not directly address continuances stemming from pandemics, natural disasters, or other emergencies, this Court has discretion to order a continuance in such circumstances. For example, the Ninth Circuit affirmed a two-week ends-of-justice continuance following Mt. St. Helens’ eruption. *Furlow v. United States*, 644 F.2d 764 (9th Cir. 1981). The court recognized that the eruption made it impossible for the trial to proceed. *Id.* at 767-68; *see also United States v. Correa*, 182 F. Supp. 326, 329 (S.D.N.Y. 2001) (citing *Furlow* to exclude time following the September 11, 2001 terrorist attacks and the resultant public emergency). The coronavirus is posing a similar, albeit more enduring, barrier to the prompt proceedings mandated by the statutory rules.

In light of the societal context created by the foregoing, this Court should consider the following case-specific facts in finding excludable delay appropriate in this particular case under the ends-of-justice exception, § 3161(h)(7) (Local Code T4). If continued, this Court should designate a new date for the [event]. *United States v. Lewis*, 611 F.3d 1172, 1176 (9th Cir. 2010) (noting any pretrial continuance must be “specifically limited in time”).

STIPULATION

Plaintiff United States of America, by and through its counsel of record, and defendants, by and through their respective counsels of record, hereby stipulate as follows:

1. By previous order, this matter was set for status on April 20, 2020.

2. By this stipulation, the parties now move to continue the status conference until August 17, 2020, and to exclude time between April 20, 2020, and August 17, 2020, under Local Code T4.

3. The parties agree and stipulate, and request that the Court find the following:

a) The discovery associated with this case includes voluminous investigative reports, wire interceptions recordings and electronic messages, precise location information data, and more, approximately 82,000 pages/files. Supplemental discovery was provided last week. All of this discovery has been either produced directly to counsel and/or made available for inspection and copying.

b) Counsel for defendant desires additional time to review discovery and to confer with his client regarding a potential resolution of this matter.

c) Counsel for defendant believes that failure to grant the above-requested continuance would deny him the reasonable time necessary for effective preparation, taking into account the exercise of due diligence.

d) The government does not object to the continuance.

e) In addition to the public health concerns cited by General Order 611 and presented by the evolving COVID-19 pandemic, an ends-of-justice delay is particularly apt in this case because counsel or other relevant individuals have been encouraged to telework and minimize personal contact to the greatest extent possible. It will be difficult to avoid personal contact should the hearing proceed.

f) Based on the above-stated findings, the ends of justice served by continuing the case as requested outweigh the interest of the public and the defendant in a trial within the original date prescribed by the Speedy Trial Act.

g) For the purpose of computing time under the Speedy Trial Act, 18 U.S.C. § 3161, et seq., within which trial must commence, the time period of April 20, 2020 to August 17, 2020,

1 inclusive, is deemed excludable pursuant to 18 U.S.C. § 3161(h)(7)(A), B(iv) [Local Code T4]
2 because it results from a continuance granted by the Court at defendant's request on the basis of
3 the Court's finding that the ends of justice served by taking such action outweigh the best interest
4 of the public and the defendant in a speedy trial.

5 4. Nothing in this stipulation and order shall preclude a finding that other provisions of the
6 Speedy Trial Act dictate that additional time periods are excludable from the period within which a trial
7 must commence.

8 IT IS SO STIPULATED.

9 Dated: April 14, 2020

MCGREGOR W. SCOTT
United States Attorney

11 /s/ Kathleen A. Servatius
KATHLEEN A. SERVATIUS
12 Assistant United States Attorney

14 DATED: April 14, 2020

/s/ Victor Perez
Victor Perez, Attorney for Diego Lua-Garcia

22 **ORDER**

23 IT IS HEREBY ORDERED that the status conference in this case be continued from April 20,
24 2020, until August 17, 2020 at 1 p.m.

25 IT IS FURTHER ORDERED THAT the ends of justice served by the schedule set forth herein as
26 requested outweigh the interest of the public and the defendants in a trial within the original date
27 prescribed by the Speedy Trial Act for the reasons stated in the parties' stipulation. For the purpose of
28 computing time under the Speedy Trial Act, 18 U.S.C. § 3161, et seq., within which trial must

1 commence, the time period of April 20, 2020 through August 17, 2020, inclusive, is deemed excludable
2 pursuant to 18 U.S.C. § 3161(h)(7)(A), B(iv) because it results from a continuance granted by the Court
3 at the parties' request on the basis of the Court's finding that the ends of justice served by taking such
4 action outweigh the best interest of the public and the defendant in a speedy trial.

5
6 IT IS SO ORDERED.

7 Dated: April 15, 2020

/s/ Sheila K. Overt
UNITED STATES MAGISTRATE JUDGE